IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 690 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMJI N SHAH

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 690 of 1984

MR MD PANDYA for Petitioner No. 1

..... for Petitioner No. 2-3

Mr. H.C. Patel, AGP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE H.K.RATHOD

Date of decision: 09/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Pandya for the appellants and Mr.H.C. Patel, learned AGP for the respondents. Against the award pronounced by the Special Land Acquisition Officer dated 30.7.1973 under section 11 of the Land Acquisition Act,1894, Land Reference Case No. 7 of 1980 was filed by the appellants original applicants before the District Judge, Jamnagar. The facts of the said reference case, in short, are to the effect that the Gujarat Industrial Development Corporation had already established the industrial estate at Jamnagar but certain other lands were required for the development of the industrial estate and, therefore, it was proposed by the above said COrporation to acquire the additional lands. Necessary notification under sec. 4 of the said Act dated 2.3.1970 was published in the Government Gazette dated 19.3.1970. Notification under section 6 dated 4.1.1971 was published in the Government Gazette dated 21.1.1971. Under this notification, the lands situated at Jamnagar under the Jamnagar Taluka of Jamnagar District comprised of 17 different survey numbers were acquired and after considering the claim of the claimant, the Special Land Acquisition Officer had awarded the compensation by the abovesaid award dated 30.7.1973. The award so pronounced by the Special Land Acquisition Officer included the land of Survey No. 1484 admeasuring 2 acres and 00 Gunthas was belonging to the original claimants. The said land when it was put in metric measurements comes to 0 Hectare and 80 Are 94 square meters which would again be 87,120 square ft. The remaining land of the above said survey number,namely revenue survey no. 1484 was also acquired and that including the applicants, remaining owners had also preferred the claim. By the abovesaid award,the special land acquisition officer awarded compensation at the rate of Rs.2.40 ps. per square meter.

Being aggrieved by the said order, all the owners of the seventeen survey numbers including the present appellants and remaining others of remaining portion of the land bearing survey no. 1484 had preferred application before the Collector, Jamnagar requesting him for making reference before the District Court, Jamnagar.

Application of the present appellants in that regard was submitted on 19.10.1973. The Special Land Acquisition Officer or the Collector made reference in respect of the remaining claimants but the application of the appellants herein was rejected on the ground that the same was barred by law of limitation. In view of the rejection of the application dated 19.10.1973 made by the appellants herein for making reference to the District Court, the appellants filed special civil suit against the Government wherein it was prayed that a decree be passed directing and ordering the Government to make a reference to the District Court, Jamnagar. Said suit being Special Civil Suit NO. 83 of 1974 was decreed by the learned Civil Judge, (SD), Jamnagar on 18th June, 1980 in favour of the present appellants and the Government was directed as per the decree passed in the said suit to make reference as prayed for by the present appellants before the District Court, Jamnagar and as a result thereof, Reference No.7 of 1980 was made before the District Court, Jamnagar under section 18 of the Land Acquisition Act, 1894.

Before the reference court, certain facts were not in dispute. The owners of the part of the land bearing survey No. 1484 namely Harilal, Babulal and Virpal who had moved the Collector for making the reference to the reference court were successful in getting their reference decided by the reference court. The land reference which were so decided by the reference court by common award dated 19.11.1975 included the reference cases of Harilal, Babulal and Virpal which were registered as the Land Reference Case No. 5 of 1974, 45 of 1974, and 42 of 1974 respectively. While deciding the aforesaid three land reference cases by consolidated judgment and award dated 19.11.1975, the reference court granted additional compensation at the rate of Rs.00.56 ps. per square ft. In other words, the owners of the part of the acquired land namely Harilal, Babulal and Virpal were successful in getting additional compensation at the rate of Rs.00.56 ps. per square ft. Said order passed by the Reference Court was challenged by the Government before this Court by filing First Appeals NO. 314 of 1977, 351 of 1977, 354 of 1977. Said three appeals were directed by the Government against the owners of the remaining portion of the acquired lands namely Harilal, Babulal and Virpal. Alongwith the other claimants, aforesaid three claimants had also lodged their cross objections. However, this court consolidated the judgment in First Appeal No. 311 of 1977 with several other appeals and cross objection dated 20.10.1980 wherein this Court dismissed the appeals and

allowed the cross objections filed by the original claimants. While allowing the cross objections, this Court awarded the compensation in the sum of Rupee one per sq. ft. in certain survey numbers. IN the same way, this court also awarded the compensation at the rate of Rs.1.10 ps. per square ft. in certain other survey numbers while for the third category, this court awarded compensation at the rate of Rs.1.25 ps. per square ft.

It was the case of the appellants herein before the reference court that their land which were acquired under the aforesaid notification admeasuring 2 acres and 00 gunthas which will be equivalent to 00 hectare 80 area and 94 square mt. which would be equivalent to 87,120 sq. ft. It was the further case of the appellants before the reference court that as a matter of fact, the special land acquisition officer has erred in not taking into consideration certain sale instances and has also erred in awarding the compensation as stated above and he ought to have awarded the compensation at the rate of Rs.2.25 ps. per square ft. Thus, it was the case of the appellants before the reference court that they should be awarded compensation in the sum of Rs.2,15,554.61 ps. which amount would include the interest upto the date of filing of reference case before the reference court and they would be entitled to further interest till the date of payment.

Before the reference court, issues were framed at Exh. 9 and the reference court, after hearing the learned advocates for the parties and also after considering the evidence on record, held that the compensation awarded was inadequate by answering issue No.1 in the affirmative and in answer to issue No.2, it was held by the reference court that the applicants present appellants are entitled to the additional total compensation of Rs.87,867.25. inclusive of the solatium but together with interest at the rate of 4.5 % p.a. from the date of taking possession i.e. 22.5.1972 till the date of payment. The Reference Court, thus, allowed the said Reference Case in part. Feeling aggrieved by the said order made by the reference court on 30thMarch, 1981, the appellants have filed the present first appeal before this court.

Before the reference court, one of the claimants namely Somchand Khimji Shah was examined at Exh. 16. Before the reference court as well as before this court, ownership or the actual measurement of the land under acquisition for which the claimants have claimed the compensation has not been disputed. As per the evidence

of one of the claimants Somchand Khimjibhai Shah at Exh. 16 before the reference court, it becomes clear that his case was to the effect that they had purchased the land under acquisition by sale deed dated 14.6.1965 which was at Exh.15 and the remaining land of the same survey number had remained to be of the ownership of three persons namely Harilal, Babulal and Virpal. It has also been deposed by the said claimant before the reference court at Exh. 16 that the land belonging to the above said three persons had also been acquired alongwith the portion of the land which is the subject matter of the present appeal but the application for making reference made by the present appellants was rejected by the special land acquisition officer but thereafter the reference has been made on the basis of the decree passed by the civil court, Jamnagar in Special Civil Suit No. 83 of 1974. It was further alleged by the said witness in his oral evidence before the reference court that the land acquisition officer awarded the compensation at the rate of Rs.2.40 ps. per square mt. but their claim before the reference court was that the compensation should be awarded at the rate of Rs.2.25 ps. per square ft. He also deposed that the matter was later on settled by the High Court of Gujarat by allowing the cross objections filed by the other claimants and the compensation was allowed at the rate of Rs.1.20 ps. per square ft. and, therefore, they should also be granted the compensation at the said rate. The judgment of the High Court was produced before the reference court at Exh. 14.

We have perused the order made by the reference court. The reference court has relied upon the decision given by this court in aforesaid three appeals which was produced at Exh.14 before the reference court. The reference court has considered pages 12 and 13 of the said judgment of this court at Exh. 14. After considering the judgment of this court at Exh.14, the reference court has observed in para 13 of its order that the High Court, while deciding the aforesaid three appeals and the cross objections, divided the entire area acquired by the Government under three different categories and the compensation has been awarded at a fluctuated rate of Rs.1.00 per square ft. for certain survey numbers and at the rate of 1.10 ps. per square ft. for certain other survey numbers and at the rate of Rs.1.25 ps. per square ft. for the remaining third category. In view of these observations made by the High Court, the reference court ultimately partly allowed the reference case by awarding additional compensation at the rate of Rs.1.10 ps. per square ft. The reference court has also considered that it is not in dispute that the

area acquired by the opponent Government belonging to the claimants admeasuring 87120 square ft. Calculating the compensation at the rate of Rs.1.10 ps.per sq. ft., the compensation for the land would come to Rs.95,832.00 ps. The solatium at the rate of 15 per cent would come to Rs.14374.80 ps. and the total thereof would come to Rs.1,10,206.80 ps. Out of the said amount, the amount already awarded by the special land acquisition officer, namely Rs.19425.00 ps. for the land and the amount of solatium of Rs.2913.85 ps. total of which would come to Rs.22339.45. should be deducted leaving behind the balance of the total figure of additional compensation at the rate of Rs.87867.35 ps. which would include the solatium at the rate of 15 per cent as stated above. On the said amount, the tribunal granted interest at the rate of 4.5 per cent per annum from the date of taking over of the possession namely 22.5.1972 till the date of payment, with proportionate costs.

In para 15 of its award,the reference court has considered decision of this court in case of Fabrics Pvt. Ltd. versus The Special Land Acquisition Officer, Kaira reported in XII GLR page 319 and has also taken into consideration the relevant observations made by this court in aforesaid decision. Ultimately, as per the observations made by the reference court in para 16 of its award, the reference court has observed that when the reference is made to the award pronounced by the special land acquisition officer, it becomes clear that the seventeen survey numbers which were acquired included lands admeasuring from 00 Hectare 02 Are and 02 sq. mt. to 04 Hectares and 38 area. The reference court observed that it would,therefore, become clear that the large plots were also included in the lands which were acquired by the special land acquisition officer and that while deciding the aforesaid first appeals and the cross objections, this Court has divided entire acquired portion of land in three different categories as stated above and it cannot be accepted that this particular aspect of the case was never considered by the High Court and, therefore, it would mean that the additional compensation awarded by the High Court has been awarded even taking into consideration the fact that certain acquired lands were from large areas of plots. Then, in para 17 of its award, the reference court has observed that it must be accepted that the compensation awarded to the applicants is inadequate and that they are entitled to the additional compensation and on the basis of such discussion, the reference court has answered issues no. 1 and 2 accordingly. Thereafter, ultimately, final order has been passed by the reference court dated 30th March,

1981 as per para 19 of the award wherein the reference case was allowed in part and it has been declared that the claimants are entitled to additional compensation of Rs.87867.35 ps. inclusive of solatium but together with interest at the rate of 4.5 per cent per annum from 22.5.72 till the date of payment with proportionate costs.

Learned advocate Mr. Pandya appearing for the appellants has submitted that the land in question bearing survey no. 1184 is near to the land bearing survey no. 1186. According to him, the question was already examined by the High Court and three different categories were made by the High Court while granting additional compensation for the land in question. He has relied upon the observations made by this Court in the judgment which is at Exh. 14 before the reference court. He has drawn our attention to the observations made by this court that on the eastern side, there is Jamnagar City and as one proceed to the west, the price declines and the difference in the price is also substantial. According to his submission, this was considered by this Court from the price of survey No. 4, 15, 17, 18 and 1488 and the remaining survey numbers are to the further west and to the south. Therefore, considering the situation and having regard to the sale instances which was considered by this Court, this court has awarded a sum of Rs.1.00 for survey numbers situated to the further west viz. survey numbers 1476, 1477, 1475 as they are to the extreme south west.He has further submitted as regards the survey numbers which are in the middle namely survey numbers 1474, 1473 and 1480 and 1481, a sum of Rs.1.10 ps. per square ft. was granted and as regards other survey numbers which are situated just near survey no. 1486, an amount of Rs.1.25 ps. per square ft. was proposed to be granted with 15 per cent solatium and interest at the rate of 4.5 % from the date of possession till realization. Mr. Pandya has submitted that this survey No. 1484 is near to survey No. 1486. From the original record, from the map itself, learned advocate Mr. Pandya has pointed out that looking to the map, survey No. 1487 is near to survey No. 1484 and, therefore, it has been submitted by Mr. Pandya that the reference court has committed an error in not considering the observations made by this Court in page 12 and 13 of its judgment at Exh. 14. He has further submitted that in view of the observations made by this court in its judgment which is at Exh. 14 of the record of the reference court, the reference court has erred in not awarding the compensation at the rate of 1.25 ps. per square ft. According to his submission, it is a clear

error committed by the reference court which is apparent on the face of the record. He has also submitted that the reference Court has also erred in relying upon the decision of this Court reported in XII GLR Page 319 to consider the large area and small area which are not relevant to the question involved before the reference court. In fact, it has been submitted by him that in respect of this very land which has been acquired by the Government, the question of additional compensation has already been examined by this Court and three different categories were made in respect of the situation of the land in question. He has submitted that in respect of the lands of certain survey numbers, this Court has awarded Rs.1.00 per square ft. and in respect of the lands of the other survey numbers, compensation has been awarded by this Court at Rs.1.10 per square ft. and as regards the survey numbers which are just near survey no.1486, this Court has awarded the compensation at the rate of Rs.1.25 ps. per square ft. He has submitted that the land bearing survey no. 1486 itself has been awarded Rs.1.25 per square ft. and, therefore, the appellants ought to have been awarded compensation at Rs. 1.25 ps. per square ft. and the reference court has committed error in awarding compensation at the rate less than Rs.1.25 ps. per square ft. According to Mr. Pandya, this is the clear error committed by the reference court. According to him, even in review application also, this contention was raised and attention to this aspect has been drawn by the appellants in their review application no. 2 of 1981 and again it was pointed out before the reference court that not to award the compensation at the rate of Rs.1.25 ps.per square ft. in respect of the land in question is contrary to the decision given by this Court. He has also submitted that this aspect has not been properly considered by the reference court even in review application and the reference court has committed same error while deciding the review application and, therefore, the appellants are entitled for compensation at the rate of Rs.1.25 ps. per square ft. He has also submitted that the reference court has committed error in considering the fluctuated rate at which the compensation has been awarded by this court for three different categories of the land. He has further submitted that the reference court has not assigned any reasons in respect of its conclusion for awarding Rs.1.10 ps. per square ft. as additional compensation and for not awarding Rs.1.25 ps.per square ft. as additional compensation. On that aspect of the matter, the reference court has not made any discussion. He has further submitted that while deciding the appeals and the

cross objections filed therein by the claimants, this court has, in terms, observed and the reference of survey No.1486 has been specifically made and the land in question is situated just near to survey no. 1486 and yet, this court has ignored the observations made by this court and has come to the conclusion which is contrary to the observations made by this court. He has submitted that the appellants are entitled for compensation at the rate of Rs.1.25 ps.per square ft. since the land in question has been situated just near to survey no.1486 and, therefore, present appeal is required to be allowed.

On the other hand, learned AGP Mr. Patel appearing for the State has submitted that the reference court has committed no error in awarding additional compensation at the rate of Rs.1.10 ps. per square ft. According to him, the reference court has rightly appreciated the observations made by this court in its judgment at Exh. 14 before the reference court and has rightly considered three categories and has rightly come to the conclusion that the case of the present appellants would fall within the second category. According to him, the reference court has rightly relied upon the decision of this court reported in XII GLR Page 319 and has also rightly appreciated this COurt's decision which was on record at Exh. 14 before the reference court. He has submitted that the reference court has rightly appreciated the facts and circumstances of the case in respect of the earlier proceedings between the Government and Harilal, Babulaland Virpal.

We have considered the submissions made by the learned advocates for the parties. We have also perused the original record as well as the decision of this court vide Exh. 14 as well as the map produced before the reference court in respect of the land in question. Most of the facts are not in dispute between the parties. For example, measurements of the land in question are not in dispute; survey numbers are not in dispute, It is also not in dispute that in earlier proceedings between the Government and said three persons namely Harilal,Babubhai and Virpal, they were getting additional compensation at Rs.00.56 ps. per square ft. and the decision of additional compensation was challenged by the State Government before this court by filing first appeal no. 311 of 1977, 351 of 1977 and 354 of 1977 wherein cross objections were filed by the said three persons before this court and ultimately consolidated judgment has been given by this court in first appeal no. 311 of 1977 with several other appeals and the cross objections. It is also not in dispute that the judgment of this court in

aforesaid appeals was at Exh. 14. It is also not in dispute that the land in question is situated just near to Survey No. 1486. In view of these admitted facts, the question for consideration of this court would be whether the decision of this court in aforesaid appeals would apply to the facts of the present case and whether the case of the appellants would fall within third category as per the decision of this court at Exh. 14 and whether the reference court was right in considering that the case of the appellants would fall within second category though it is situated just near to survey no.1486. For appreciating these question, the observations made by this Court at page 12 and 13 are very much relevant and, therefore, same are reproduced as under:

> "As we have observed earlier, on the eastern side, there is Jamnagar City and as one proceeds to the west the price declines and the difference in the price is also substantial. This we have shown from the price of survey nos.4,15, 17 and 18 and 1488. The remaining survey numbers are to the further west and to the south. Considering, therefore, the situation and having regard to the sale instances which we have discussed we propose to award a sum of Rs.1 for survey numbers situated to the further west viz. survey Nos.1476,1477 and 1475. They are to the extreme south west. Then there are survey numbers which are in the middle. They are survey numbers which are in the middle. They are survey numbers 1474, 1473, 1480 and 1481. We propose to award a sum of Rs.1.10 ps. per sq. ft. and in regard to the other survey numbers which are situated just near surveyno.1486, we propose to award Rs.1.28 per sq. ft. The claimants would be also entitled to 15 % solatium and interest at the rate of 4.5% from the date of possession till realization."

Thus, from the bare reading of page 12 and 13 of the judgment of this court in earlier appeals filed by the State Government, in regard to the other survey numbers which are situated just near surveyno.1486, this court has awarded Rs.1.25 per sq. ft. Since it is not disputed by the respondents herein that the land in question is not situated just near to survey No. 1486, the appellants would also be entitled to the additional compensation at the same rate as has been awarded by this court in respect of the land survey no. 1486. We have considered the observations made by this court in the

judgment at Exh. 14, in First Appeal No. 311 of 1977. While making three different categories for granting compensation, this court has, in terms considered that on the eastern side, there is Jamnagar City and as one proceeds to the west the price declines and the difference in the price is also substantial. This has been considered by this court on the basis of the price of survey nos.4,15, 17 and 18 and 1488. Therefore, the situation and having regard to the sale instances this court awarded a sum of Rs.1 for survey numbers situated to the further west viz. survey Nos.1476,1477 and 1475. as they are to the extreme south west. As regards the survey numbers which are in the middle, namely as regards survey numbers 1474, 1473, 1480 and 1481, this court has awarded a sum of Rs.1.10 ps. per sq. ft. and in regard to the other survey numbers which are situated just near surveyno.1486, this court has awarded Rs.1.25 per sq. ft. Therefore, considering these observations made by this court and also looking to the situation of the land in question of survey no. 1484 which is admittedly just near to survey no. 1486, according to our opinion, land bearing survey no.1484 is required to be granted the additional compensation at the rate of Rs.1.28, as per the third category, as situated just near survey no. 1486. According to our opinion, this aspect has not at all been taken into account by the reference court while deciding the reference case as well as the aforesaid review application. We have gone through entire judgment and award made by the reference court as well as the order made by it on an application for review made by the present claimants but there is no such discussion made by the reference court for awarding the additional compensation at Rs. 1.10 ps. per square ft. We are of the view that the reference court has considered the observations made by this court at page 12 and 13 of its judgment but has failed to appreciate such observations in their proper perspective and thereby has committed error in coming to the conclusion that the appellants are entitled to additional compensation at the rate of Rs.1.10 ps. Therefore, according to our opinion, the view of the reference court is erroneous as contrary to the observations made by this court in First Appeal No. 311 of 1987 and it also shows total non application of mind on the part of the reference court because this court has granted Rs.1.10 ps. per square ft. in respect of survey numbers which are in the middle. They are of survey numbers which are in the middle. From the observations made by this court, it is clear that the case of the present appellants was falling in third category as near to survey No. 1486 and yet the reference court believed that the present claimants would

be entitled to additional compensation at Rs.1.10 ps. per sq. ft. though situated near to survey no. 1486 and, therefore, it shows total non application of mind on the part of the reference court. The reference court has also committed an error in rejecting the review application though the observations made by this court were again brought to its notice. There was no any justification in either of the two orders made by the reference court for awarding Rs.1.10 ps. per square ft. as additional compensation. Therefore, according to us, the reference court has committed error in granting the additional compensation at the rate of Rs.1.10 ps. per square ft. and, therefore, the orders passed by the reference court in reference case as well as the review application, both are required to be qmodified as under:

In view of the above, present appeal is allowed. The present appellants are entitled to additional compensation at the rate of Rs.1.25 ps. per square ft., meaning thereby, Rs.00.15 ps. more per square ft. for 87120 square ft. which comes to Rs. 13,680.00 with consequential solatium at the rate of 15 per cent and interest at the rate of 4.5% per cent per annum on the additional amount of compensation. There shall be no order as to costs.

Dt.9.9.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)

Vyas